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8
9 **UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

10 NICHOLAS ROLOVICH,

11 Plaintiff,

12 v.

13 WASHINGTON STATE
UNIVERSITY, an agency of the
14 State of Washington,

15 Defendant.¹

NO. 2:22-cv-00319-TOR

DEFENDANT WSU'S ANSWER
TO PLAINTIFF'S SECOND
AMENDED COMPLAINT

16
17 ¹Previous Defendants Patrick Chun and Governor Jay Inslee have been
18 removed from the case caption, consistent with the Court's order granting in part
19 Defendants' Motions to Dismiss. ECF Nos. 33, 57. The Second Amended
20 Complaint disregards those orders by continuing to refer to Mr. Chun and
21 Governor Inslee as "Defendants" and specifically pleading claims against them
22 that the Court previously dismissed with prejudice. WSU denies that any claims

GENERAL DENIAL

Defendant Washington State University (WSU), by and through its attorneys, Robert W. Ferguson, Attorney General of Washington, Spencer W. Coates, Assistant Attorney General, and Zachary J. Pekelis and W. Scott Ferron, Special Assistant Attorneys General, hereby answer Plaintiff's Second Amended Complaint (SAC). Except as expressly admitted or qualified, WSU denies each and every allegation, statement, or charge in the SAC (whether contained in numbered paragraphs, unnumbered paragraphs, headings, or elsewhere), and denies that Plaintiff is entitled to any of the relief requested. To the extent that section and subsection headings used in the SAC constitute allegations to which a response is required, those allegations are denied.

I. INTRODUCTION

1. Paragraph 1 asserts allegations regarding Plaintiff's purported motivations or legal conclusions or argument, none of which requires a response by way of factual pleading. To the extent a response is required, Paragraph 1 is denied.

2. Paragraph 2 asserts legal conclusions to which no response is required, and contains characterizations of the SAC which speaks for itself. To the extent a response is required, Paragraph 2 is denied.

against Mr. Chun or Governor Inslee remain in or could be asserted in this action.

See ECF No. 57.

II. JURISDICTION AND VENUE

3. Paragraph 3 asserts a legal conclusion to which no response is required. To the extent a response is required, Paragraph 3 is denied.

4. Paragraph 4 asserts legal conclusions to which no response is required, and contains characterizations of an Employment Agreement that speaks for itself. To the extent a response is required, Paragraph 4 is denied.

III. EXHAUSTION OF ADMINISTRATIVE PROCEDURES/REMEDIES

A. WSU Administrative Process

5. The first sentence of Paragraph 5 contains characterizations of an Employment Agreement that speaks for itself. To the extent a response is required, WSU admits that the Employment Agreement allowed Plaintiff to appeal to the University President or designee a decision of the Athletic Director regarding termination for just cause. WSU admits that Plaintiff timely responded to the Athletic Director's notice of the provisions of the Agreement alleged to have been violated and that Plaintiff timely appealed the Athletic Director's decision to terminate for just cause. WSU admits that President Schultz denied Mr. Rolovich's appeal of the Athletic Director's decision on or about December 6, 2021. Paragraph 5 is otherwise denied.

B. Equal Employment Opportunity Commission/Washington State Human Rights Commission

6. WSU admits that Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC), and that EEOC notified

1 WSU of this charge on February 17, 2022. The remainder of Paragraph 6 contains
2 legal conclusions or argument to which no response is required. To the extent a
3 further response is required, the allegations are denied.

4 7. WSU admits that the U.S. Department of Justice's Civil Rights
5 Division (DOJ) issued a Notice of Right to Sue to Plaintiff on August 16, 2022.
6 WSU is without information sufficient to form a belief as to the truth of the
7 remaining allegations in Paragraph 7 and therefore denies them.

8 **C. Department of Enterprise Services—Office of Risk Management**
9 **(Tort Claim)**

10 8. Admit.

11 9. Admit.

12 10. Paragraph 10 contains legal conclusions or argument to which no
13 response is required. To the extent a further response is required, the allegations
14 are denied.

15 **IV. PARTIES**

16 11. WSU admits that Plaintiff was the Head Football Coach for WSU
17 from January 14, 2020, until his employment was terminated on December 6,
18 2021. WSU is without information sufficient to form a belief as to the truth of
19 the remaining allegations in Paragraph 11 and therefore denies them.

20 12. Admit.

21 13. WSU admits that Patrick Chun is the Athletics Director for WSU
22 and that he was sued in his individual capacity before being dismissed by this

1 Court as a Defendant on May 30, 2023, and again on October 24, 2023. WSU
 2 denies that Plaintiff may assert any claims against Mr. Chun. The remainder of
 3 Paragraph 13 contains legal conclusions or argument to which no response is
 4 required. To the extent a further response is required, the allegations are denied.

5 14. WSU admits that Jay Inslee is the Governor of Washington and that
 6 he was sued in his official capacity before being dismissed by this Court as a
 7 Defendant on May 30, 2023, and again on October 24, 2023. ECF Nos. 33, 57.
 8 To the extent a further response is required, the allegations are denied.

9 **V. STATEMENT OF FACTS**

10 15. WSU admits that it terminated Plaintiff's employment for just cause.
 11 The remainder of Paragraph 15 contains legal conclusions or argument to which
 12 no response is required. To the extent a further response is required, the
 13 allegations are denied.

14 **A.**

15 16. WSU denies that the SAC attached a true and correct copy of the
 16 employment agreement between Plaintiff and WSU as an exhibit. WSU admits
 17 that it entered into a memorandum of understanding (MOU) with Plaintiff, which
 18 was dated January 13, 2020. WSU further admits that it executed an employment
 19 agreement (the Agreement) with Plaintiff in April 2020. Both the MOU and the
 20 Agreement speak for themselves. The remaining allegations in Paragraph 16
 21 consist of legal conclusions or argument to which no response is required. To the
 22 extent a further response is required, the allegations are denied.

1 17. WSU admits that Paragraph 17 quotes some portions of the
2 Agreement, which speaks for itself. The remainder of Paragraph 17 contains legal
3 conclusions and argument to which no response is required. To the extent a
4 further response is required, the allegations are denied.

5 18. WSU admits that Paragraph 18 quotes some portions of the
6 Agreement, which speaks for itself. The remainder of Paragraph 18 contains legal
7 conclusions and argument to which no response is required. To the extent a
8 further response is required, the allegations are denied.

9 19. WSU admits that Paragraph 19 quotes Paragraph 4.1 of the
10 Agreement, which speaks for itself. The remainder of Paragraph 19 contains legal
11 conclusions and argument to which no response is required. To the extent a
12 further response is required, the allegations are denied.

13 20. Paragraph 20 contains legal conclusions and argument to which no
14 response is required. To the extent a further response is required, the allegations
15 are denied.

16 **B.**

17 21. WSU admits that Governor Inslee issued Proclamation 20-05, which
18 speaks for itself, on February 29, 2020. WSU further admits that Proclamation
19 20-05 was Governor Inslee's first proclamation related to COVID-19. WSU is
20 without information sufficient to form a belief as to the truth of the remaining
21 allegations in Paragraph 21 and therefore denies the same.
22

1 22. WSU admits that some employees—including assistant football
2 coaches—signed updated employment agreements in 2021, all of which speak
3 for themselves. The remainder of Paragraph 22 contains legal conclusions and
4 argument to which no response is required. To the extent a further response is
5 required, the allegations are denied.

6 23. WSU admits that the Agreement was never amended from its
7 original form. The remainder of Paragraph 23 contains legal conclusions and
8 argument to which no response is required. To the extent a further response is
9 required, the allegations are denied.

10 **C.**

11 24. WSU is without information sufficient to form a belief as to the truth
12 of the allegations in Paragraph 24 and therefore denies them.

13 25. WSU is without information sufficient to form a belief as to the truth
14 of the allegations in Paragraph 25 and therefore denies them.

15 26. WSU is without information sufficient to form a belief as to the truth
16 of the allegations in Paragraph 26 and therefore denies them.

17 27. WSU is without information sufficient to form a belief as to the truth
18 of the allegations in Paragraph 27 and therefore denies them.

19 28. WSU is without information sufficient to form a belief as to the truth
20 of the allegations in Paragraph 28 and therefore denies them.

21 29. WSU is without information sufficient to form a belief as to the truth
22 of the allegations in Paragraph 29 and therefore denies them.

D.

30. WSU denies that statements attributed to Mr. Chun in the SAC, even if true, would “demonstrate[] his hostility toward Mr. Rolovich’s expressed religious” beliefs. WSU is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 30 and therefore denies them.

31. WSU is without information sufficient to form a belief as to the truth of the allegations in Paragraph 31 and therefore denies them.

32. WSU is without information sufficient to form a belief as to the truth of the allegations in Paragraph 32 and therefore denies them.

33. WSU admits that at some points prior to August 20, 2021, it had permitted exemptions from the University’s COVID-19 vaccination requirement for employees based on either medical reasons or “personal/religious” objections. Consistent with Governor Inslee’s Proclamation 21-14, WSU modified its policy to limit exemptions and reasonable accommodations to those employees who were unable to receive the COVID-19 vaccines due to medical reasons or sincerely held religious beliefs. To the extent a further response is required, Paragraph 33 is denied.

34. WSU is without information sufficient to form a belief as to the truth of the allegations in Paragraph 34 and therefore denies them.

35. WSU is without information sufficient to form a belief as to the truth of the allegations in Paragraph 35 and therefore denies them.

1 36. WSU admits that Paragraph 36 accurately quotes a portion of an
2 August 24, 2021, Q13 Fox article that purports to quote an email from Kathryn
3 Leathers. WSU is without information sufficient to form a belief as to the truth
4 of the remaining allegations in Paragraph 36 and therefore denies them.

5 37. WSU admits that Paragraph 37 accurately quotes a portion of an
6 October 13, 2021, KXLY article, which speaks for itself. WSU denies the
7 remainder of Paragraph 37.

8 38. WSU is without information sufficient to form a belief as to the truth
9 of the allegations in Paragraph 38 and therefore denies them.

10 39. WSU is without information sufficient to form a belief as to the truth
11 of the allegations in Paragraph 39 and therefore denies them.

12 40. WSU is without information sufficient to form a belief as to the truth
13 of the allegations in Paragraph 40 and therefore denies them.

14 41. WSU is without information sufficient to form a belief as to the truth
15 of the allegations in Paragraph 41 and therefore denies them.

16 42. WSU admits that Plaintiff emailed WSU's Human Resource
17 Services (HRS) regarding exemptions from the COVID-19 vaccination
18 requirement. Those emails speak for themselves. To the extent a further response
19 is required, WSU is without information sufficient to form a belief as to the truth
20 of the remaining allegations in Paragraph 42 and therefore denies them.

21 43. WSU is without information sufficient to form a belief as to the truth
22 of the allegations in Paragraph 43 and therefore denies them.

1 44. WSU is without information sufficient to form a belief as to the truth
2 of the allegations in Paragraph 44 and therefore denies them.

3 45. WSU is without information sufficient to form a belief as to the truth
4 of the allegations in Paragraph 45 and therefore denies them.

5 46. WSU is without information sufficient to form a belief as to the truth
6 of the allegations in Paragraph 46 and therefore denies them.

7 47. WSU is without information sufficient to form a belief as to the truth
8 of the allegations in Paragraph 47 and therefore denies them.

9 48. WSU admits that on or about August 20, 2021, Governor Inslee
10 issued Proclamation 21-14.1, which speaks for itself.

11 49. WSU denies that Paragraph 49 accurately quotes a portion of
12 Proclamation 21-14.1, which speaks for itself. To the extent a further response is
13 required, Paragraph 49 contains legal conclusions to which no response is
14 required. To the extent a further response is required, the allegations are denied.

15 **E.**

16 50. WSU admits that Paragraph 50 accurately quotes a portion of a
17 September 13, 2021, DailyMed announcement, which speaks for itself. WSU
18 admits that footnote 3 of Paragraph 50 accurately quotes a portion of the
19 document hyperlinked therein, which speaks for itself. Except as expressly
20 admitted above, WSU denies all remaining allegations in Paragraph 50.

1 51. WSU denies that any letter was attached as an exhibit to the SAC.
2 WSU is without information sufficient to form a belief as to the truth of the
3 remaining allegations in Paragraph 51 and therefore denies them.

4 52. WSU is without information sufficient to form a belief as to the truth
5 of the allegations in Paragraph 52 and therefore denies them.

6 53. WSU is without information sufficient to form a belief as to the truth
7 of the allegations in Paragraph 53 and therefore denies them.

8 54. Paragraph 54 contains legal conclusions and argument to which no
9 response is required. To the extent a further response is required, the allegations
10 are denied.

11 55. Paragraph 55 cites a federal statute, 21 U.S.C. § 360bbb-3, which
12 speaks for itself. Paragraph 55 contains legal conclusions and argument to which
13 no response is required. To the extent a further response is required, the
14 allegations are denied.

15 56. WSU admits that Paragraph 56 contains a link to the FDA's website
16 but denies that the link directs the reader to the Fact Sheet referenced in that
17 paragraph. Regardless, the Fact Sheet speaks for itself. To the extent a further
18 response is required, the allegations are denied.

19 57. Denied.

20 58. Denied.

F.

59. WSU admits that it timely established procedures for its employees to request, and for the University to consider and approve or deny requests for, religious and/or medical exemptions in accordance with Proclamation 21-14, as amended. WSU denies the remaining allegations in Paragraph 59.

60. WSU admits that WSU published its procedures for evaluating requests for religious exemptions pursuant to Proclamation 21-14, as amended, on the University's website and that it shared "Frequently Asked Questions (FAQs)" with answers. WSU further admits that Paragraph 60 accurately quotes a portion of the FAQs, which speaks for itself, but denies that the link in footnote 4 of Paragraph 60 directs the reader to the FAQs. The remainder of Paragraph 60 contains legal conclusions and argument to which no response is required. To the extent a further response is required, the allegations are denied.

61. WSU admits that Paragraph 61 accurately quotes portions of the WSU-Everett webpage cited in footnote 5, which webpage speaks for itself. The remainder of Paragraph 61 contains legal conclusions and argument to which no response is required. To the extent any further response is required, WSU denies the remaining allegations contained in Paragraph 61.

62. WSU admits that Paragraph 62 accurately quotes portions of the October 7, 2021, Mercury News article cited in footnote 6, which article speaks for itself. The remainder of Paragraph 62 contains legal conclusions and

1 argument to which no response is required. To the extent any further response is
2 required, WSU denies the remaining allegations contained in Paragraph 62.

3 **G.**

4 63. Denied.

5 64. WSU admits that HRS sent Mr. Chun an email on October 6, 2021,
6 which speaks for itself. The remaining allegations in Paragraph 64 are denied.

7 65. WSU admits that Paragraph 65 accurately quotes portions of an
8 October 6, 2021, email from HRS, which speaks for itself. To the extent a further
9 response is required, any remaining allegations are denied.

10 **H.**

11 66. WSU admits that the Athletics Department sent HRS two
12 memoranda dated October 13, 2021, which speak for themselves. To the extent
13 a further response is required, any remaining allegations in Paragraph 66 are
14 denied.

15 67. WSU admits that Paragraph 67 accurately quotes portions of one of
16 the October 13, 2021, Athletics Department memoranda and HRS's October 6,
17 2021 email, which speak for themselves. To the extent a further response is
18 required, any remaining allegations in Paragraph 67 are denied.

19 68. WSU admits that on October 14, 2021, the Department of
20 Environmental Health and Safety (EH&S) sent a memorandum to Mr. Chun and
21 the Athletics Department, and that Paragraph 68 accurately quotes a portion of
22

1 this memorandum, which speaks for itself. To the extent a further response is
2 required, any remaining allegations in Paragraph 68 are denied.

3 69. WSU admits that the Athletics Department sent HRS a
4 memorandum in response to the October 14, 2021, EH&S memorandum, and that
5 Paragraph 69 accurately quotes a portion of this memorandum, which speaks for
6 itself. To the extent a further response is required, any remaining allegations are
7 denied.

8 70. WSU admits that the Athletics Department issued a memorandum
9 in response to the October 14, 2021, EH&S memorandum, and that Paragraph 70
10 accurately quotes some portions of this memorandum, which speaks for itself. To
11 the extent a further response is required, any remaining allegations are denied.

12 **I.**

13 71. WSU admits that it developed protocols for employees during the
14 COVID-19 pandemic and that Plaintiff, as a former WSU employee, was
15 required to follow them while employed by WSU. WSU is without information
16 sufficient to form a belief as to the truth of the remaining allegations in
17 Paragraph 71 and therefore denies them.

18 72. WSU admits that Paragraph 72 accurately quotes portions of the
19 Spokesman Review article cited in footnote 7, and that the article appears to have
20 originally run in the Seattle Times. The article speaks for itself. To the extent any
21 further response is required, WSU denies the remaining allegations contained in
22 Paragraph 72.

1 73. WSU is without information sufficient to form a belief as to the truth
2 of the allegations in Paragraph 73 and therefore denies them.

3 74. WSU is without information sufficient to form a belief as to the truth
4 of the allegations in Paragraph 74 and therefore denies them.

5 75. WSU admits that Paragraph 75 links to a Post Millennial article
6 dated November 19, 2021, which speaks for itself. WSU is without information
7 sufficient to form a belief as to the truth of the remaining allegations in
8 Paragraph 75 and therefore denies them.

9 **J.**

10 76. WSU admits that counsel for Plaintiff provided WSU with a
11 document, purportedly a declaration from Dr. Bhattacharya, on November 2,
12 2021, which speaks for itself. WSU denies the remainder of the allegations of
13 Paragraph 76.

14 77. WSU is without information sufficient to form a belief as to the truth
15 of the allegations in Paragraph 77 and therefore denies them.

16 78. WSU is without information sufficient to form a belief as to the truth
17 of the allegations in Paragraph 78 and therefore denies them.

18 79. WSU is without information sufficient to form a belief as to the truth
19 of the allegations in Paragraph 79 and therefore denies them.

20 80. Denied.

21 81. WSU admits that Paragraph 81 accurately reproduces a portion of
22 the declaration provided to WSU on November 2, 2021, purportedly by

1 Dr. Bhattacharya, which speaks for itself. WSU is without information sufficient
2 to form a belief as to the truth of the remaining allegations in Paragraph 81 and
3 therefore denies them.

4 82. WSU admits that Paragraph 82 accurately quotes a portion of the
5 declaration provided to WSU on November 2, 2021, purportedly by
6 Dr. Bhattacharya, which speaks for itself. WSU is without information sufficient
7 to form a belief as to the truth of the remaining allegations in Paragraph 82 and
8 therefore denies them.

9 83. WSU is without information sufficient to form a belief as to the truth
10 of the allegations in Paragraph 83 and therefore denies them.

11 84. WSU admits that Paragraph 84 accurately quotes a portion of the
12 Declaration provided to WSU on November 2, 2021, purportedly by
13 Dr. Bhattacharya, which speaks for itself. WSU is without information sufficient
14 to form a belief as to the truth of the remaining allegations in Paragraph 84 and
15 therefore denies them.

16 85. WSU admits that Paragraph 85 accurately quotes three words of a
17 July 28, 2021, Washington Post article, which speaks for itself. WSU is without
18 information sufficient to form a belief as to the truth of the remaining allegations
19 in Paragraph 85 and therefore denies them.

20 86. WSU admits that Paragraph 86 accurately quotes a portion of the
21 Declaration provided to WSU on November 2, 2021, purportedly by
22 Dr. Bhattacharya, which speaks for itself. WSU is without information sufficient

1 to form a belief as to the truth of the remaining allegations in Paragraph 86 and
2 therefore denies them.

3 87. Paragraph 87 characterizes the conclusions of the declaration
4 provided on November 2, 2021, purportedly by Dr. Bhattacharya, which speaks
5 for itself. Footnote 13 to Paragraph 87 cites two news articles, both of which
6 speak for themselves. WSU is without information sufficient to form a belief as
7 to the truth of the remaining allegations in Paragraph 87 and therefore denies
8 them.

9 88. Denied.

10 89. Paragraph 89 contains legal conclusions and argument to which no
11 response is required. Paragraph 89 characterizes the opinion of a purported expert
12 that speaks for itself. To the extent a further response is required, the allegations
13 are denied.

14 **K.**

15 90. WSU admits that Paragraph 90 contains an accurately quoted
16 portion from the October 18, 2021, email from HRS Exemptions to Plaintiff. The
17 email speaks for itself. WSU is without information sufficient to form a belief as
18 to the truth of the remaining allegations in Paragraph 90 and therefore denies
19 them.

20 91. WSU denies the first sentence of Paragraph 91. WSU admits that
21 the second sentence of Paragraph 91 contains an accurately quoted portion from
22

1 the October 18, 2021, email from HRS Exemptions to Plaintiff, which speaks for
2 itself, and otherwise denies the second sentence of Paragraph 91.

3 92. WSU denies that HRS ever took the position “that Mr. Rolovich’s
4 sincere religious beliefs could be accommodated by WSU,” or that its October
5 18, 2021, email to Plaintiff represented a “revers[al]” of any such position. WSU
6 admits that the October 18, 2021, email from HRS to Plaintiff stated that “it
7 would pose an undue hardship to the University and/or a threat to yourself and
8 others to allow you to remain in your position while unvaccinated.” The email
9 speaks for itself. To the extent a further response is required, any remaining
10 allegations in Paragraph 92 are denied.

11 93. WSU admits that it provided Mr. Rolovich with a Notice of Intent
12 to Terminate With Just Cause on October 18, 2021, which speaks for itself.
13 Paragraph 93 also contains legal conclusions and arguments to which no response
14 is required. To the extent any further response is required, WSU is without
15 information sufficient to form a belief as to the truth of the remaining allegations
16 in Paragraph 93 and therefore denies them.

17 94. WSU is without information sufficient to form a belief as to the truth
18 of the allegations in Paragraph 94 and therefore denies them.

19 95. WSU is without information sufficient to form a belief as to the truth
20 of the allegations in Paragraph 95 and therefore denies them.

21 96. WSU is without information sufficient to form a belief as to the truth
22 of the allegations in Paragraph 96 and therefore denies them.

1 97. Paragraph 97 contains legal conclusions and argument to which no
2 response is required. To the extent a further response is required, the allegations
3 are denied.

4 **COUNT I**
5 **BREACH OF CONTRACT**
6 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR**
7 **DEALING**

8 98. WSU incorporates by reference its answers to the preceding
9 paragraphs.

10 99. Paragraph 99 contains legal conclusions and argument to which no
11 response is required. To the extent a further response is required, the allegations
12 are denied.

13 100. WSU admits that it terminated Plaintiff's employment in
14 December 2021 for just cause. The remainder of Paragraph 100 contains legal
15 conclusions and argument to which no response is required. To the extent a
16 further response is required, the allegations are denied.

17 101. Denied.

18 102. Denied.

19 103. Paragraph 103 contains legal conclusions and argument to which no
20 response is required. To the extent a further response is required, the allegations
21 are denied.
22

1 104. Paragraph 104 contains legal conclusions and argument to which no
2 response is required. To the extent a further response is required, the allegations
3 are denied.

4 105. Denied.

5 106. Denied.

6 107. Denied.

7 108. Denied.

8 109. Paragraph 109 contains legal conclusions and argument to which no
9 response is required. To the extent a further response is required, the allegations
10 are denied.

11 110. Denied.

12 111. Denied.

13 **COUNT II**
14 **WRONGFUL WITHHOLDINGS OF WAGES**
 RCW 49.52, et. seq., and RCW 49.48.010, et seq.

15 112. WSU incorporates by reference its answers to the preceding
16 paragraphs.

17 113. Paragraph 113 contains legal conclusions and argument to which no
18 response is required. To the extent a further response is required, the allegations
19 are denied.

20 114. WSU admits that Plaintiff's employment was terminated for just
21 cause in December 2021. The remainder of Paragraph 114 contains legal
22 conclusions and argument to which no response is required. To the extent a

1 further response is required, the remaining allegations of Paragraph 114 are
2 denied.

3 115. Paragraph 115 contains legal conclusions and argument to which no
4 response is required. To the extent a further response is required, the allegations
5 are denied.

6 116. Paragraph 116 contains legal conclusions and argument to which no
7 response is required. To the extent a further response is required, the allegations
8 are denied.

9 117. Paragraph 117 contains legal conclusions and argument to which no
10 response is required. To the extent a further response is required, the allegations
11 are denied.

12 **COUNT III**
13 **WASHINGTON LAW AGAINST DISCRIMINATION**
14 **RCW 49.60 *et seq.***

15 118. WSU incorporates by reference its answers to the preceding
16 paragraphs.

17 119. Denied.

18 120. Paragraph 120 contains legal conclusions and argument to which no
19 response is required. To the extent a further response is required, the allegations
20 are denied.
21
22

COUNT IV
WASHINGTON CONSTITUTION, ARTICLE 1, SECTION 11
DISCRIMINATION AGAINST RELIGION/CONSCIENCE

121. WSU incorporates by reference its answers to the preceding paragraphs.

122. Count IV was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57). Accordingly, no response is required. To the extent any response is required, Paragraph 122 is denied.

123. Count IV was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57). Accordingly, no response is required. To the extent any response is required, Paragraph 123 is denied.

124. Count IV was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57). Accordingly, no response is required. To the extent any response is required, Paragraph 124 is denied.

COUNT V
VIOLATION OF TITLE VII, 42 U.S.C. § 2000e, et seq.

125. WSU incorporates by reference its answers to the preceding paragraphs.

1 126. Paragraph 126 contains legal conclusions and argument to which no
2 response is required. To the extent a further response is required, the allegations
3 are denied.

4 127. Denied.

5 128. WSU admits that Plaintiff requested a religious exemption and
6 accommodation from Proclamation 21-14's vaccination requirement. To the
7 extent a further response is required, any remaining allegations in Paragraph 128
8 are denied.

9 129. Paragraph 129 contains legal conclusions and argument to which no
10 response is required. To the extent a further response is required, the allegations
11 are denied.

12 130. Denied.

13 131. Denied.

14 132. Paragraph 132 contains legal conclusions and argument to which no
15 response is required. To the extent a further response is required, the allegations
16 are denied.

17 133. Denied.

18 134. Denied.

19 135. Denied.
20
21
22

COUNT VI
42 U.S.C., SECTION 1983
First Amendment-Free Exercise of Religion and Fourteenth
Amendment-Due Process
(Defendant Chun only, in his Individual Capacity)

136. WSU incorporates by reference its answers to the preceding paragraphs.

137. Count VI was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57). Accordingly, no response is required. To the extent any response is required, Paragraph 137 is denied.

138. Count VI was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57). Accordingly, no response is required. To the extent any response is required, Paragraph 138 is denied.

139. Count VI was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57). Accordingly, no response is required. To the extent any response is required, Paragraph 139 is denied.

140. Count VI was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57). Accordingly, no response is required. To the extent any response is required, Paragraph 140 is denied.

1 141. Count VI was dismissed with prejudice per this Court's May 30,
2 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57).
3 Accordingly, no response is required. To the extent any response is required,
4 Paragraph 141 is denied.

5 142. Count VI was dismissed with prejudice per this Court's May 30,
6 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57).
7 Accordingly, no response is required. To the extent any response is required,
8 Paragraph 142 is denied.

9 143. Count VI was dismissed with prejudice per this Court's May 30,
10 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57).
11 Accordingly, no response is required. To the extent any response is required,
12 Paragraph 143 is denied.

13 144. Count VI was dismissed with prejudice per this Court's May 30,
14 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57).
15 Accordingly, no response is required. To the extent any response is required,
16 Paragraph 144 is denied.

17 145. Count VI was dismissed with prejudice per this Court's May 30,
18 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57).
19 Accordingly, no response is required. To the extent any response is required,
20 Paragraph 145 is denied.

COUNT VII
42 U.S.C., SECTION 1983
(First Amendment-Free Exercise of Religion)

146. WSU incorporates by reference its answers to the preceding paragraphs.

147. Count VII was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57). Accordingly, no response is required. To the extent any response is required, Paragraph 147 is denied.

148. Count VII was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57). Accordingly, no response is required. To the extent any response is required, Paragraph 148 is denied.

149. Count VII was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57). Accordingly, no response is required. To the extent any response is required, Paragraph 149 is denied.

150. Count VII was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57). Accordingly, no response is required. To the extent any response is required, Paragraph 150 is denied.

151. Count VII was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57).

1 Accordingly, no response is required. To the extent any response is required,
2 Paragraph 151 is denied.

3 152. Count VII was dismissed with prejudice per this Court's May 30,
4 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57).
5 Accordingly, no response is required. To the extent any response is required,
6 Paragraph 152 is denied.

7 **COUNT VIII**
8 **FOURTEENTH AMENDMENT-DUE PROCESS (As Applied)**

9 153. Count VIII was dismissed with prejudice per this Court's May 30,
10 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57).
11 Accordingly, no response is required. To the extent any response is required,
12 Paragraph 153 is denied.

13 154. Count VIII was dismissed with prejudice per this Court's May 30,
14 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57).
15 Accordingly, no response is required. To the extent any response is required,
16 Paragraph 154 is denied.

17 155. Count VIII was dismissed with prejudice per this Court's May 30,
18 2023, Order (ECF No. 33), and again on October 24, 2023 (ECF No. 57).
19 Accordingly, no response is required. To the extent any response is required,
20 Paragraph 155 is denied.
21
22

PRAYER FOR RELIEF

Paragraphs a through i of the Prayer for Relief section of the SAC constitute Plaintiff's requests for relief, to which no response is required. To the extent a response is required, WSU denies Plaintiff is entitled to the relief requested or to any relief whatsoever.

AFFIRMATIVE DEFENSES

WSU's affirmative defenses to the SAC are set forth below. By setting forth the following defenses, WSU does not assume burden of proof on the matter and issue other than those on which it has the burden of proof as a matter of law. WSU reserves the right to supplement these defenses.

1. Plaintiff's SAC improperly asserts claims already dismissed with prejudice by this Court against Defendant WSU, and against Former Defendants Patrick Chun and Jay Inslee, who have already been terminated as Defendants by Order of this Court. *See* ECF Nos. 33, 57.

2. Plaintiff has failed to state a claim, in whole or in part, upon which relief may be granted.

3. Plaintiff's damages, if any, were caused by Plaintiff's own acts or omissions or by the acts or omissions of third parties.

4. The SAC fails, in whole or in part, because some or all of the relief sought may be barred by Plaintiff's failure to mitigate damages.

5. WSU's actions with respect to Plaintiff and concerning Plaintiff's employment were based solely on legitimate, non-discriminatory, and

1 non-retaliatory business reasons, and were the result of a good faith effort to
2 comply with the law.

3 6. Plaintiff's claims are barred in whole or in part by the doctrines of
4 laches, waiver, unclean hands, estoppel, and/or fraud on the court.

5 7. Accommodating Plaintiff would have imposed an undue hardship
6 on WSU.

7 8. Plaintiff's claim under RCW 49.52, et seq., and RCW 49.48.010,
8 et seq. fail as a matter of law because, *inter alia*, Washington's Wage Rebate Act
9 does not apply to damages awards, and WSU did not willfully withhold
10 Plaintiff's wages because a bona fide dispute existed as to Plaintiff's right to
11 liquidated damages.

12 9. WSU has not yet had a full opportunity to conduct discovery and,
13 accordingly, reserves the right to assert additional affirmative defenses that may
14 be disclosed in the course of discovery.

15 **WSU'S REQUEST FOR RELIEF**

16 Wherefore, WSU prays that the Court:

- 17 1. Dismiss Plaintiff's Second Amended Complaint with prejudice;
- 18 2. Deny all relief that Plaintiff requests;
- 19 3. Grant WSU its costs and reasonable attorneys' fees; and
- 20 4. Grant WSU such other and further relief as the Court may deem just
21 and proper.
22

1 DATED this 7th day of November 2023.

2 ROBERT W. FERGUSON
3 Attorney General

4 /s/ Spencer W. Coates
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22

CERTIFICATE OF SERVICE

I hereby certify that on November 7th, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 7th day of November 2023, at Seattle, Washington.

/s/ Spencer W. Coates
SPENCER W. COATES, WSBA #49683
Assistant Attorney General